



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0125; Notice 2]

Mercedes-Benz USA, LLC, Denial of Petition for Decision of Inconsequential

Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Mercedes-Benz AG (MB AG) and Mercedes-Benz USA, LLC (MBUSA) (collectively, “Mercedes-Benz”), formerly known as Daimler AG has determined that certain model year (MY) 2019 Mercedes-Benz AMG GT motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 201, *Occupant Protection in Interior Impact*. Mercedes-Benz filed a noncompliance report dated October 18, 2019, and subsequently petitioned NHTSA on November 7, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the denial of Mercedes-Benz’s petition.

FOR FURTHER INFORMATION CONTACT: Karen Nuschler, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-5829.

SUPPLEMENTARY INFORMATION:

I. Overview:

Mercedes-Benz has determined that certain MY 2019 Mercedes-Benz AMG GT motor vehicles do not fully comply with paragraph S5.3.1(c) of FMVSS No. 201, *Occupant Protection in Interior Impact* (49 CFR 571.201).

Mercedes-Benz filed a noncompliance report dated October 18, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently

petitioned NHTSA on November 7, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Mercedes-Benz's petition was published, with a 30-day public comment period, on May 21, 2020, in the **Federal Register** (85 FR 31023). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management Systems (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2019-0125."

II. Vehicles Involved:

Approximately 12 MY 2019 Mercedes-Benz GT63, GT53, and GT63S AMG motor vehicles, manufactured between August 29, 2017, and March 4, 2019, are potentially involved.

III. Noncompliance:

Mercedes-Benz explains that an interior compartment door assembly in the subject vehicles does not meet the requirements of paragraph S5.3.1(c) of FMVSS No. 201. Specifically, the front center console storage compartment sliding lid may open briefly in certain types of forward crashes.

IV. Rule Requirements:

Paragraphs S5.3, S5.3.1(a) and S5.3.1(c) of FMVSS No. 201, include the requirements relevant to this petition. Each interior compartment door assembly located in an instrument panel, console assembly, seat back, or side panel adjacent to a designated seating position shall remain closed when tested in accordance with either S5.3.1(a) and S5.3.1(b) or S5.3.1(a) and S5.3.1(c). S5.3.1(a) subjects the interior compartment door latch system to an inertia load of 10g in a horizontal transverse direction and an inertia load of 10g in a vertical direction in accordance with the procedure described in section 5 of SAE Recommended Practice J839b (1965) (incorporated by reference, see § 571.5), or an approved equivalent. Further, S5.3.1(c) subjects

the interior compartment door latch system to a horizontal inertia load of 30g in a longitudinal direction in accordance with the procedure described in section 5 of SAE Recommended Practice J839b (1965) (incorporated by reference, see § 571.5), or an approved equivalent.

V. Summary of Mercedes-Benz's Petition:

The following views and arguments presented in this section, "V. Summary of Mercedes-Benz's Petition," are the views and arguments provided by Mercedes-Benz. They do not reflect the views of the Agency. Mercedes-Benz describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Background: Prior to the introduction of the MY 2019 AMG GT vehicles to the United States market, MB AG found that the lid of the front center console could open for a matter of milliseconds and that the supplier of the compartment had tested the locking mechanism of the door with 24g of force, instead of the 30g force requirement contained in S5.3.1(c). The crash lock was updated in production, prior to introduction to the U.S. market, to ensure conformance to the force requirements in S5.3.1(c) and vehicles in the company's possession were reworked.¹ MB AG later identified 12 vehicles that had not received the improved crash lock mechanism prior to being released into the field and made a determination to submit a part 573 Noncompliance Information Report on October 11, 2019. In support of its petition, Mercedes-Benz submits the following reasoning:

1. At issue in this petition are a total of 12 MY 2019 Mercedes-Benz AMG GT vehicles. MB AG previously determined that the interior compartment door located within the vehicle's center console does not fully meet the requirement in FMVSS No. 201, *Occupant Protection in Interior Impact*, when tested to the demonstration procedure for frontal crash set forth in the standard. In a frontal

¹ The crash lock mechanism is not installed on vehicles offered for sale outside of the United States, Canada and South Korea, where FMVSS 201 or its equivalent has been adopted. According to the petition, MB AG is not aware of any claims or reports of injuries due to the performance of the interior compartment door in any market.

crash scenario, there is a possibility for the lid of the interior compartment door in the center console to open for a matter of milliseconds, after which the door will automatically close again.

2. Mercedes-Benz states that due to the location and geometry of the compartment door, there is no risk of injury even if it were to open in a frontal crash.

Mercedes-Benz states that the door is located in the center console, below the in-vehicle display, and does not present an opportunity to strike vehicle occupants when opened. Further, because the design of the door slides forward and into the center console when it opens, there is similarly no risk of injury from the performance of the door. Finally, although the purpose and objective of the standard is to protect against injury from hard and sharp surfaces in the event of a crash, because the compartment door will automatically close within an extremely short period of time (a matter of milliseconds) from opening and because the door may only open during a frontal crash in which case any objects within the compartment would only move in a forward direction and not rearward into the occupant compartment, there is no risk of harm from objects inside the compartment escaping into the occupant space.

3. The Performance of the Compartment Door Does Not Create an Increased Safety Risk: Mercedes-Benz cites the provisions of the Safety Act, 49 U.S.C. 30118(d) and 30120(h) and the basis upon which NHTSA evaluates an inconsequentiality petition “whether an occupant who is affected by the noncompliance is likely to be exposed to a *significantly greater risk* than an occupant in a compliant vehicle.” See 69 FR 19897, 19900 (April 14, 2004) (emphasis added).

As described below, the issue here does not impact the operational safety of the vehicle and will not create an enhanced risk to vehicle occupants because, in the limited, frontal crash scenario in which the door could potentially open,

neither the door itself nor any objects within the compartment could cause injury to vehicle occupants.

4. Description of the Compartment Door: Mercedes-Benz explains that the interior compartment door at issue in this petition is a storage compartment used in vehicles with the Wireless Media Interface (WMI) package. The WMI feature allows users to wirelessly charge cell phones within the compartment and the compartment can also be used to store small objects like coins and accessories. The compartment is located within the center console between the driver and front passenger's seat and the storage portion of the compartment is approximately 15 cm/ 6 inches long and 13 cm/ 5 inches deep.

In normal use, the door remains shut until an occupant pushes the door forward. The door moves forward in an upward direction, towards the front of the vehicle. When reaching the top, the door is enclosed within the housing of the compartment itself and, with an additional push is snapped into place to remain open. Once it is snapped into place, in order to close the door an occupant can pull the door slightly from the housing. The door then closes automatically. As a result, if the door does open briefly during a frontal crash and is not pushed fully into the latched open position, Mercedes-Benz states it will quickly and automatically close.

5. It is Not Possible for the Compartment Door to Strike Occupants: Mercedes-Benz states that the performance of the interior compartment door does not present any of the safety risks contemplated by FMVSS No. 201 because there is no risk of vehicle occupants coming into contact with or striking the compartment door. When originally promulgated, the interior compartment door provisions in FMVSS No. 201 were focused on preventing injuries that could occur from hard interior doors, such as the glove compartment door, striking an occupant. *See* 33

FR 15794 (October 24, 1968) (considering “the potential injury that can be caused by an open interior compartment door because... [prior requirements] do not afford protection against the type of *protrusion created by an open interior compartment door*”) (emphasis added); *see also Letter to M. Smith*, August 26, 1988 (“the purpose of the requirement is to prevent a door from flying open and striking an occupant in a crash.”) The standard, which was also promulgated at a time when seat belt use was substantially lower than it is today, was directed toward mitigating injuries that can be caused by interior doors with hard and sharp surfaces opening unexpectedly. That risk is not present here.

The location, geometry, and operation of the compartment door prevent it from causing or contributing to an injury in the event of a crash. The door is located in the bottom of the center console, in the area between the driver and front passenger seats. Mercedes-Benz states that the door is installed in a location where it could not strike a vehicle occupant should it open in a crash. The door, moreover, does not have any sharp edges and is not comprised of a hard, metal surface.

Further, Mercedes-Benz states that because of the manner in which the door opens, there is no opportunity for the door to strike a vehicle occupant. The door covering slides forwards and into the housing of the compartment itself, it does not extend outwards into the passenger compartment which is the concern that the standard is intended to address. In typical use, the operator slides the door covering away towards the front of the vehicle, away from the occupant compartment and into the center console where it becomes fully enclosed within the housing. By contrast, glove box doors and other interior compartment doors on hinges that open outwards and into the occupant compartment are the traditional types of doors that FMVSS No. 201 was designed to address because

the door's surface could come into contact with a vehicle occupant if it opened in a crash. Mercedes-Benz contends that this same risk does not exist with the door covering in the AMG vehicles based on its geometry and design.

Additionally, the compartment door will automatically close after opening if it has not been snapped into place to stay open. In the event of a frontal crash force that is severe enough to cause the door to open, the door would open for an extremely short period of time, a matter of milliseconds, and then would automatically pull back into place and the door will close again. Because of the design and operation of the door, it remains open for a matter of milliseconds seconds after which it will retreat back into its fully closed position.

6. There is No Risk of Injury to Occupants from Objects Escaping the Compartment: Mercedes-Benz states there is no potential for items inside the storage compartment to escape and injure vehicle occupants. Although the scope of the standard has always been focused on risks of injury presented by the hard surface of vehicle doors opening in a crash, Mercedes-Benz claims that there is similarly no enhanced risk to safety from items escaping the compartment and causing injury. The compartment door has the potential to open only in specific situations, a frontal crash with loads exceeding 24 g of force. Mercedes-Benz states that the compartment door operates within the requirements of the standard at all other times.² Mercedes-Benz states that even in a crash where the load force was severe enough, the compartment lid would open and completely close again within approximately 250 ms of the crash. Mercedes-Benz claims that even in a front end crash that was severe enough to open the compartment door, the direction of the crash forces precludes objects from escaping. In a front end

²The vehicles fully meet the performance requirements when tested to S5.3.1(a) and S5.3.1(b).

collision with high vehicle deceleration, any objects inside the storage compartment at the time would shift forward, in the same direction in which the vehicle is moving. According to Mercedes-Benz, because the force of deceleration causes the items to shift forward, they will move forward and deeper into the compartment and will remain enclosed within the compartment during the crash event. During the intervening moments following the crash, the door will automatically close and secure the items within the compartment.

7. Mercedes-Benz states that the above described discrepancy does not create a safety risk and that it is not aware of any warranty claims, field reports, customer complaints, legal claims, or injuries related to this noncompliance. Even if the compartment door was to open in the event of a severe crash, there is no increased risk of injury due to the location of the door covering itself, its operation and design that allows it to retract into the console housing and the fact that it will automatically close after an extremely short period of time. Mercedes-Benz states that vehicle occupants are not at risk of coming into contact with the door itself (when opened or closed) and there is no risk of objects stored inside the compartment from escaping into the occupant space.

Mercedes-Benz concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis:

FMVSS No. 201 establishes performance requirements designed to reduce the risk of injury in the event an occupant strikes the interior of a vehicle during a crash. S5.3 of FMVSS No. 201 specifies that doors to interior compartments must remain latched when subjected to certain forces that might be experienced in a crash.

NHTSA notes first that a petitioner seeking relief from the notification and remedy requirements must, when requesting the Agency to grant a petition for inconsequential noncompliance, meet the burden of persuasion to obtain relief. Further, the burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.³ Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.⁴ NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. "Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future."⁵ "[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work."⁶

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.⁷ Similarly, NHTSA has

³ Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

⁴ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

⁵ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁶ *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

⁷ See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential*

rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.⁸ These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

Mercedes-Benz states that the door is located in the center console, below the in-vehicle display, and does not present an opportunity to strike vehicle occupants when opened. Further, Mercedes-Benz states the design of the door slides forward and into the center console when it opens and presents little or no opportunity for any contact between the vehicle's occupants and the door. Finally, although the purpose and objective of the standard are to protect against injury from hard and sharp surfaces in the event of a crash, Mercedes-Benz states the compartment door will automatically close within 250 ms.

Without presenting any test data or other information supporting this thesis, Mercedes-Benz argues that in a frontal crash there is the possibility that the center console door will open for a matter of milliseconds then automatically close. Specifically, Mercedes-Benz represents that there is “no risk of injury to occupants from objects escaping the compartment...only opening in crash loads exceeding 24 g of force...and would open and completely close within approximately 250 ms.” NHTSA notes that frontal crash events, such as seen in NHTSA FMVSS No. 208, *Occupant Crash Protection* compliance tests or New Car Assessment Program Tests, terminate in 150 ms or less and can exceed 24 g.

NHTSA finds that in the instant case, the mere assertion that the center console door will

Noncompliance, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

⁸ See *Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

open for up to 250 ms and then automatically close is not sufficiently persuasive to justify granting the relief Mercedes-Benz seeks. In addition, the Agency has never made a distinction between sliding interior compartment doors and other, pivoting or hinged doors that project outward when opened. Mercedes-Benz asserts that an open sliding compartment door does not present a potential for occupant injury because an open sliding compartment door does not project outward into the interior of the vehicle. S5.3 of FMVSS No. 201 requires that doors in the console or a side panel remain closed regardless of the method by which a manufacturer chooses to open or close them. The concern that an open door could cause occupant injury is not limited to a protrusion created by an open door. Rather, the concern addressed by the requirement is that a sharp or rigid surface does not expose an occupant to undue risk of injury. In other words, we do not consider the risk posed by the sharp edges of the door itself to be the only risk addressed by FMVSS No. 201. Surfaces that should be masked by a door may themselves pose risks to occupants during a crash.⁹

Finally, Mercedes-Benz represents that it is “not aware of any warranty claims, field reports, customer complaints, legal claims, or injuries related to this noncompliance.” As noted above, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety.

VII. NHTSA’s Decision:

NHTSA finds that Mercedes-Benz has not met its burden of persuasion that the FMVSS No. 201 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, the petition is hereby denied and Mercedes-Benz is not exempt from the obligation to provide notification of, and remedy for, the subject noncompliance in the affected vehicles under 49 U.S.C. 30018 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Anne L. Collins,

⁹ See Agency Interpretation to D. Haenchen, Volkswagen of America, Inc., February 12, 2004

Associate Administrator for Enforcement.

[FR Doc. 2022-26959 Filed: 12/12/2022 8:45 am; Publication Date: 12/13/2022]